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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,984	08/22/2001	David John Maxwell	01-1021	8270

7590

06/06/2005

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EXAMINER

SCUDERI, PHILIP S

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,984

Applicant(s)

MAXWELL ET AL.

Examiner

Philip S. Scuderi

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to Applicant's amendment filed on January 19th, 2005 and applicant's election filed on April 25th, 2005. Claims 1, 2, 7, 8, 10, 12, 14, 15, 18, and 20-23 are amended. Claims 3-6, 9, 11, 16, 17, 19, and 24 are presented for further consideration. Claim 13 is non-elected.

Specification

2. The examiner acknowledges that applicant has amended the specification to limit the abstract to one paragraph, to remove legal phraseology from the abstract, to change the invention title to be sufficiently descriptive of the claimed invention, and to correct the typographical errors sited. The examiner has withdrawn the objections to the specification.

Drawings

3. The examiner acknowledges that applicant has amended figures 1-3 to include the legend – Prior Art– and has amended figure 1 to include labels descriptive of the items shown in figure 1. The examiner has withdrawn the objections to the drawings.

Claim Objections

4. The examiner acknowledges that applicant has amended claims 1, 7, 8, 10, 14, 20, 21, and 23 to include the recommended changes. The examiner has withdrawn the objections to the claims.

Claim Rejections - 35 USC § 101

5. The examiner has withdrawn the claim rejections under 35 USC § 101 because applicant's amendments have overcome the rejections.

Claim Rejections - 35 USC § 112

6. The examiner acknowledges that applicant has amended claims 1, 2, 7, 8, 12, 13, 14, 15, 20, and 21 to provide proper antecedent basis for the claim limitations that had improper antecedent basis. The examiner has withdrawn the 35 USC § 112 second paragraph rejections due to improper antecedent basis.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-10, 12, and 14-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. The meaning of the limitation "server-like devices" is unclear. In response to the 35 U.S.C. 112 first paragraph rejections (now withdrawn) applicant argued that "selecting one or more groups of devices as server-like devices by selecting one of said points as a cut-off point beyond which all devices are considered as exhibiting server-like behavior" was an example definition of server-like devices. However, since the limitation is a recitation of claims 11 and 24, it follows that other server-like devices exist which do not fall within the scope of claims 11 and 24. If the limitation was meant to define server-like devices, then the examiner recommends incorporating the limitation into the independent claims.

Response to Amendment

10. The examiner has determined that the 35 USC § 112 first paragraph rejections were unreasonable. The examiner has corrected his position in this Office Action by correctly withdrawing the 35 USC § 112 first paragraph rejections and replacing them with 35 USC § 112 second paragraph rejections. Accordingly, this action is non-final.

11. The examiner finds applicant's arguments to the 35 USC § 103 rejections persuasive. Schenkel does not disclose determining a respective ingress to egress network traffic ratio for at least some of the devices. Rather, Schenkel discloses measuring the traffic from one device of a pair of devices, measuring the traffic output from one device of a pair of devices, and measuring the traffic received by another device, and declaring the existence of a communication link in the event the traffic is approximately the same. Accordingly, the examiner has withdrawn the rejections under 35 USC § 103.

Allowable Subject Matter

12. Claims 1-12 and 14-24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. The prior art of record does not teach and would have rendered the claimed invention obvious.

13. Specifically, the prior art does not teach determining a respective ingress to egress network traffic ration for at least some of devices on a network, and selecting server-like devices on the basis of each determined ratio or a figure derived from each determined ratio.

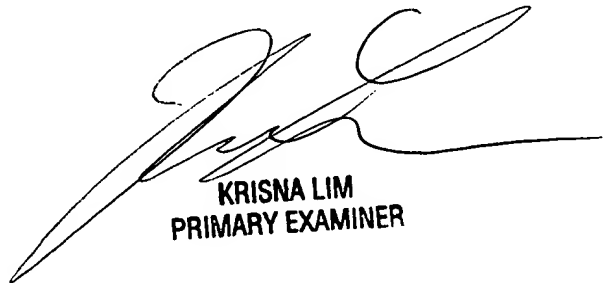
Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip S. Scuderi whose telephone number is (571) 272-5865. The examiner can normally be reached on Monday-Friday 8am-5pm.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton B. Burgess can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PSS



KRISNA LIM
PRIMARY EXAMINER